

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ALLAN PARMELEE,

Plaintiff,

v.

SHIRLEY CLARK, KERRI ROBINSON,
JAY JACKSON, CHARLES PEASE, STEVE
SINCLAIR, BERNARD WARNER, JO
PHILLIPS, FRANK SMITH, JOHN
ROGERS, JOHN EDWARDS, SCOTT
FRAKES, JOHN HAMMOND, SHARI HALL
and UNKNOWN OTHERS,

Defendants.

No. CV-13-5046-EFS

**ORDER DENYING LEAVE TO PROCEED IN
FORMA PAUPERIS, DISMISSING ACTION
FOR FAILURE TO PAY FILING FEE,
AND DENYING PENDING MOTIONS AS
MOOT**

By Order filed May 31, 2013, the Court directed Mr. Parmelee, a *pro se* prisoner at the Washington State Penitentiary ("WSP"), to show cause why his application to proceed *in forma pauperis* should not be denied as precluded under 28 U.S.C. § 1915(g). In the alternative, Plaintiff was directed to pay the applicable \$400.00 filing fee for this action under 28 U.S.C. § 1914. He did not pay the fee.

A review of court records from the United States District Court, Western District of Washington, and the Ninth Circuit Court of Appeals, shows that Mr. Parmelee's extensive history of filing cases deemed frivolous or malicious, or which failed to state a claim upon which relief may be granted, culminated in a bar order, see W.D. Wash.

1 Cause No. CV-01-1467-BJR, and a pre-filing review order, see Ninth
2 Circuit Cause No. 02-80026. More than a decade ago, Plaintiff was
3 barred from proceeding *in forma pauperis* pursuant to § 1915(g). See
4 *Parmelee v. King County, et al.*, C99-1896P, although that case was
5 allowed to proceed upon payment of the full filing fee; *Parmelee v.*
6 *Bautista, et al.*, C00-1884C; and *Parmelee v. Kempton, et al.*, C01-
7 507R. Plaintiff does not refute these findings regarding his
8 litigation history.

9 In his initial, self-prepared complaint, which was signed on
10 April 5, and again on April 8, 2013, and received on April 11, 2013,
11 ECF No. 1, Mr. Parmele asserted "imminent risks of additional physical
12 injury." He failed, however, to support his assertion with factual
13 allegations. His contention of "deliberate indifference to a physical
14 disability and risks," as well as his complaints of three incidents of
15 food poisoning in 2011 and 2012, for which he had received e-coli
16 treatment on one of those occasions, did not demonstrate he was "under
17 imminent danger of serious physical injury." 28 U.S.C. § 1915(g); see
18 also *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007) (an
19 exception to the three-strikes rule exists only where "the complaint
20 makes a plausible allegation that the prisoner faced 'imminent danger
21 of serious physical injury' at the time of filing").

22 Likewise, Plaintiff's assertions of "inadequate and unsafe
23 food," based on complaints that he had been making since 2008, were
24 insufficient to demonstrate "imminent danger of serious physical
25 injury." Plaintiff alleged that milk was served "spoiled" three out of
26 seven days per week; lettuce was served "rotten"; food items were

1 missing from the trays and, therefore, were not in compliance with
2 nutrition charts; guards served meals without wearing hairnets,
3 leaving hair and other dirt on trays, stacking uncovered trays,
4 sticking dirty fingers into food, picking up dropped food from the
5 ground and placing it back on trays that are served to inmates; the
6 meat was "pink slime"; and the food had no flavor. Plaintiff did not
7 state when any of these conditions occurred, how frequently, or
8 whether they occurred recently or sometime in the previous five years.
9 The facts in the initial complaint failed to show an immediate danger
10 to Plaintiff's health and well-being.

11 Although Plaintiff claimed he was 35 to 40 pounds underweight,
12 he did not assert the time frame of any weight loss. He admitted that
13 he had been receiving dietary supplements, although he claimed they
14 were "cut off" the day before he initially signed his complaint.
15 Absent allegations of a significant weight loss between the time he
16 was placed in IMU-South in March 2013, and when he filed his complaint
17 in early April 2013, Plaintiff failed to show an "imminent danger of
18 serious physical injury." Plaintiff had indicated that he was
19 returned to the WSP only in February 2013.

20 Plaintiff asserted in his complaint that rather than
21 "correct[ing] the problems of insufficient food," unidentified
22 Defendants threatened him "with violence, force feeding and assaults
23 if he persists on refusing to proverbially [sic] eat from a garbage can
24 or eat like farm animals" As presented, these conclusory
25 allegations did not demonstrate that, at the time of his complaint,
26 Plaintiff was exempted from the application of 28 U.S.C. § 1915(g).

1 Mr. Parmelee's subsequent decision to engage in "self-
2 starvation" as set forth in his proposed amended complaint, ECF No.
3 10, his Motion for Appointment of Counsel, ECF No. 8, his Motion for
4 Temporary Restraining Order and a Hearing for a Preliminary Injunction
5 to Prevent Force and Force Feeding over Food and Unnecessary Pain and
6 Suffering, ECF. No. 11, and his accompanying declarations, ECF Nos. 9
7 and 12, received on June 5, 2013, does not demonstrate that he was
8 under "imminent danger of serious physical injury" at the hands of
9 identified Defendants at the time he filed his initial complaint. It
10 appears a prisoner would have no constitutionally protected right in
11 avoiding forced nutrition and hydration in response to a "hunger-
12 strike." See *McNabb v. Dep't. of Corr.*, 163 Wash.2d 393, 407 (2008)
13 (State's interests in applying Department of Corrections' force-
14 feeding policy to inmate outweighed inmate's right to refuse
15 artificial means of nutrition and hydration); see also *Martinez v.*
16 *Turner*, 977 F.2d 421, 423 (8th Cir. 1992) (federal prisoner's
17 allegation of force feeding by prison authorities did not state
18 constitutional claim when attachments to pleadings reflected a medical
19 determination that force feeding was necessary to the inmate's health,
20 and that regulations authorized the force feeding of hunger striking
21 inmates) *cert. denied*, 507 U.S. 1009 (1993).

22 On June 21, 2013, Plaintiff filed a Response, ECF No. 14, to the
23 Order to Show Cause, ECF No. 7. After review of his submissions, the
24 Court finds Mr. Parmelee's allegations are insufficient to overcome
25 the filing restrictions under 28 U.S.C. § 1915(g). Because Mr.
26 Parmelee was precluded from proceeding *in forma pauperis* at the time

1 he lodged his complaint, and he has not paid the \$400.00 filing fee,
2 he may not proceed with this action.

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. Plaintiff's Application to Proceed *In Forma Pauperis*, **ECF**
5 **No. 2**, is **DENIED**.

6 2. This action is **DISMISSED WITHOUT PREJUDICE** for failure to
7 pay the applicable filing fee, pursuant to 28 U.S.C. §
8 1914.

9 3. All pending motions are **DENIED AS MOOT**.

10 4. The Clerk's Office is directed to **ENTER JUDGMENT** of
11 dismissal without prejudice and to **CLOSE** the file.

12 5. The Court certifies that any appeal of this dismissal would
13 not be taken in good faith.

14 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
15 Order and provide a copy to Plaintiff at his last known address.

16 **DATED** this 16th day of July 2013.

17
18 s/ Edward F. Shea
19 EDWARD F. SHEA
20 Senior United States District Judge
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